IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.11615 of 2004

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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GUJARAT STATE CO-OPERATIVE BANK LTD. - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR KG VAKHARIA, SR. ADVOCATE, with MR MK VAKHARIA for Petitioner(s) : 1,
MS ARCHNA RAWAL, AGP for Respondent(s) : 1 - 2.
MR DHARMESH V SHAH for Respondent(s) : 3,
MR RAJESHWAR J DAVE for Respondent(s) : 3,
MR TUSHAR MEHTA for Respondent(s) : 4,
MR AMAR N BHATT for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 02/12/2006
ORAL JUDGMENT

(1) RULE. The learned advocates for the respective respondents are directed to waive service of rule.

(2) This petition has been filed praying for following reliefs:

"(8) For the reasons stated hereinabove and those which may be urged at the time of hearing, the petitioner prays that:

(a) a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction may kindly be granted directing the respondent no.3 to pay to the petitioner bank the entire amount recovered against the borrowings/advances given by the third respondent in respect of which security is given to the petitioner bank;

(aa) Issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ order, direction quashing and setting aside the impugned circular dated 4/11/2004 at Annexure A-1.

(b) direct the respondent no.3 to strictly follow the instructions contained in Circular dated 23 January, 2004 in the matter of disbursement of amount recovered against borrowings/advances given by the third respondent;

(bb) Pending admission, hearing and final disposal of this petition, direct the respondents not to implement the circular dated 4/11/2004 at Annexure-1.

(c) pending admission hearing and final disposal of this petition direct the third respondent to make payment of recovery already made by the third respondent against the borrowings/advances given by the third respondent in respect of which security is given to the petitioner bank;

(d) grant such other and further reliefs as the Hon'ble Court may deem fit in the facts and circumstances of the case.

(e) Allow this petition with costs.

(3) It is an admitted position between the parties that though there might be distinction qua the facts, the principal issue is the same as in case of *The Federation of Kheda District C-operative Credit Societies Limited & Ors. Vs. The State of Gujarat & Ors.*, Special Civil Application No.20104 of 2006 and cognate matters viz. whether the Registrar, Co-operative Societies, in exercise of his powers of general supervision, control and direction under Section 110 of the Gujarat Co-operative Societies Act, 1961 (the Act), can issue a circular so as to lay down order of priority for disbursement in the process of liquidation despite the provisions of Section 110(e) of the Act specifying that the liquidator appointed under Section 108 of the Act shall have the powers to investigate all claims against the society and to decide the questions of priority arising out of such claims.

(4) It has been held by judgment rendered today in case of *The Federation of Kheda District Co-operative Credit Societies Limited & Ors. Vs. The State of Gujarat & Ors.*, in Special Civil Application No.20104 of 2006 and cognate matters, that the Registrar does not have

powers and hence, in so far as the present petition is concerned, the same is allowed for the reasons stated in the said judgment and with the same directions the matter is restored to the liquidator for deciding the order of priority afresh in accordance with the provisions of the Act, more particularly Section 110 of the Act. RULE made absolute There shall be no order as to costs.

(5) At this stage a request is made on behalf of the respondent authorities that the liquidator may be prohibited for some time from making any order of disbursement. This prayer is required to be stated to be rejected as the Court has merely directed, in each of the petitions, that the liquidator shall decide the order of priority afresh without being influenced by any of the circulars issued by the Registrar. Therefore, in absence of any order of priority as of today, there cannot be any disbursement which is required to be stayed. Hence, the request is rejected.

Sd/-
[D.A. MEHTA, J]

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Bhavesh*